

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DAVID R. BENGTON)

For Appellant: David R. Bengtson,
in pro. per.

For Respondent: James T. Philbin
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of David R. Bengtson against a proposed assessment of additional personal income tax and penalties in the total amount of \$17,158.12 for the year 1979.

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The issue for determination is whether appellant has established any error in respondent's proposed assessment.

Appellant David R. Bengtson is self-employed as the owner of a sandblasting business. He did not file a California personal income tax return for 1979. When he failed to answer respondent's demand that he file a return, respondent issued a proposed assessment with penalties for failure to file, failure to file after notice and demand, and negligence (Rev. & Tax. Code, §§ 18681, 18683, and 18684). The assessment was based upon the gross receipts he had reported for his business in 1978, with a fifteen percent addition for growth and inflation. After appellant's protest against the proposed assessment was denied, he appealed to this board and sent respondent a 1979 tax return form. He disclosed to respondent no income or expense information, and filled the form's blanks with the word "none" or with an indication that he was objecting "on the grounds of 'self-incrimination.'"

Appellant's first argument is that the Fifth Amendment allows him to refuse to file a valid return because any information he might provide thereon could incriminate him with respect to some undisclosed crime. We have consistently dismissed this tired claim as frivolous. (See, e.g., Appeal of Ronald W. Matheson, Cal. St. Bd. of Equal., Feb. 6, 1980.) He must be aware that the privilege against self-incrimination will not support a blanket failure to supply any income and expense information on a tax return form. (United States v. Daly, 481 F.2d 28 (8th Cir.), cert. den. 414 U.S. 1064 [38 Ed.2d 469] (1973); Appeal of Ruben B. Salas, Cal. St. Bd. of Equal., Sept. 27, 1978.)

Appellant's second contention is that his income for 1979 was less than respondent estimated, his deductions exceeded the standard deduction that respondent employed in computing his taxable income, and his ultimate tax liability for 1979 was in fact so low that he was not required to file a return.

It has long been settled that respondent's determinations of 'additional tax and penalties are presumed correct and the burden is on the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) Where, as here, the taxpayer has refused to furnish any financial infor-

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mation at all, respondent may reasonably reconstruct income from available information.' (Rev. & Tax. Code, § 18648; Appeal of Walter L. Johnson, Cal. St. Bd. of Equal., Sept. 17, 1973.) The burden is upon appellant to show that his income differed from respondent's determination (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980), and to substantiate any itemized deductions in excess of the allowed standard deduction. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L X X1348] (1934); Appeal of William C. Vogel, Cal. St. Bd. of Equal., Jan. 6, 1981.) He has failed to do so.

Furthermore, the record does not support appellant's claim that, because his deductions and credits diminished his tax liability, he had no duty to file a return. A return must be submitted in a particular year if the taxpayer's adjusted gross income for that year exceeds certain minimum amounts specified in Revenue and Taxation Code section 18401; the taxpayer's taxable income, deductions, or credits are irrelevant to this determination. Respondent calculated that appellant's adjusted gross income for 1979 exceeded the section 18401 minimums. Since appellant has offered no evidence to refute this determination, we conclude that he was indeed required to file. (Spies v. United States, 317 U.S. 492, 496 [87 L.Ed. 418] (1942).)

As to the penalties, in cases of this type we have consistently upheld penalties such as those assessed herein. (Appeal of Arthur J. Porth, Cal. St. Bd. of Equal., Jan. 9, 1979.) The record indicates that the penalties imposed in this case were fully justified.

For the foregoing reasons, respondent's actions must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of David R. Bengtson against a proposed assessment of additional personal income tax and penalties in the total amount of \$17,158.12 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day of June , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett _____, Chairman
Ernest J. Dronenburg, Jr. _____, Member
Richard Nevins _____, Member
_____, Member
_____, Member